

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SYED MUNAWWAR QADRI, ESQUIRE,
AND ARAMIS AYALA, STATE ATTORNEY,
NINTH JUDICIAL CIRCUIT, ORANGE
COUNTY, FLORIDA,

Petitioners,

v.

Case Nos. 5D20-427
5D20-429

SANDRA MARIE RIVERA-MERCADO,

Respondent.

_____ /

SYED MUNAWWAR QADRI, ESQUIRE,

Appellant,

v.

Case No. 5D20-457

SANDRA MARIE RIVERA-MERCADO AND
ARAMIS AYALA, STATE ATTORNEY,
NINTH JUDICIAL CIRCUIT,
ORANGE COUNTY, FLORIDA,

Appellees.

_____ /

Opinion filed August 31, 2020

Petitions for Writ of Certiorari and
Nonfinal Appeal from the Circuit
Court for Orange County,
Patricia Strowbridge, Judge.

Michael Broussard and Megan Oliva, of Broussard, Cullen & Blastic, P.A., Orlando, for Petitioner/Appellant, Syed Munawwar Qadri, Esquire.

Britt Thomas and Christopher Torres, of Office of the Attorney General, Tallahassee, for Petitioner/Appellee, Aramis Ayala, State Attorney, Ninth Judicial Circuit, Orange County, Florida.

Andrew B. Greenlee, of Andrew B. Greenlee, P.A., Sanford, and Fritz Scheller of Fritz Scheller, P.L., Orlando, for Respondent/Appellee, Sandra Marie Rivera-Mercado.

COHEN, J.

Syed Munawwar Qadri and Aramis Ayala, State Attorney, Ninth Judicial Circuit, appeal the denial of their motions to dismiss a lawsuit brought by Sandra Marie Rivera-Mercado.¹ We consolidate these cases for opinion purposes only.² Because Mr. Qadri and Ms. Ayala are entitled to absolute immunity from suit, we grant the petitions for certiorari and reverse the order denying the motion to dismiss.

¹ These cases took differing forms because of the applicability of Florida Rule of Appellate Procedure 9.130. A nonfinal appeal is permitted for the denial of an immunity claim under section 768.28, Florida Statutes (2015). The other immunity claims are not explicitly listed in rule 9.130 and thus can only be addressed in petitions for certiorari. As a result, case no. 5D20-457 is a nonfinal appeal dealing with Mr. Qadri's section 768.28 immunity claim; case no. 5D20-427 is a certiorari petition dealing with Mr. Qadri's absolute and qualified immunity claims; and case no. 5D20-429 is a certiorari petition that addresses Ms. Ayala's absolute immunity claim.

² Specifically, case nos. 5D20-427 and 5D20-429, having been previously consolidated, we now consolidate case no. 5D20-457 with the others for purposes of this opinion.

Ms. Rivera-Mercado's complaint raised three claims. The counts against Mr. Qadri alleged malicious prosecution and false arrest; the one count against Ms. Ayala alleged false arrest. Ms. Rivera-Mercado asserted that Mr. Qadri filed an application for and obtained a material witness warrant based on statements that he knew to be false, causing her to be arrested. By doing so, Mr. Qadri "stepped outside of his role as a prosecutor," and "assumed the role of a complaining witness," such that his actions were outside the scope of his employment. In the false arrest claim, Ms. Rivera-Mercado alleged that Mr. Qadri "failed to conduct a reasonable investigation and otherwise failed to establish probable cause" to have her arrested. It was asserted this was done outside the scope of Mr. Qadri's employment and in a manner exhibiting a willful disregard of Ms. Rivera-Mercado's rights. The false arrest count against Ms. Ayala alleged that the Office of the State Attorney, as Mr. Qadri's employer, was responsible for Mr. Qadri's actions.

Criminal charges against Pedro Rivera and Concepcion Picart-Rivas were the genesis of this lawsuit. Mr. Rivera was charged with aggravated battery causing great bodily harm, tampering with physical evidence, and possession of a firearm by a convicted felon. In a related case, Mr. Picart-Rivas was charged with aggravated battery with great bodily harm and battery. Mr. Qadri was the assistant state attorney assigned both cases. The State believed that Ms. Rivera-Mercado was an eyewitness to the crimes.

Mr. Picart-Rivas filed a stand-your-ground motion to dismiss. See § 776.032, Fla. Stat. (2015). Ms. Rivera-Mercado testified at the resulting hearing, and the charges

against Mr. Picart-Rivas were dismissed.³ In her complaint, Ms. Rivera-Mercado alleged that her testimony at the stand-your-ground hearing “infuriated” Mr. Qadri.

On the same day as the stand-your-ground hearing, the Office of the State Attorney served Ms. Rivera-Mercado with a subpoena to appear at Mr. Rivera’s trial. The complaint alleged that in Mr. Qadri’s presence, Ms. Rivera-Mercado gave her cell phone number to the investigator with the State Attorney’s Office and told the investigator she could call her in advance of trial. The complaint averred that Mr. Qadri repeatedly called Ms. Rivera-Mercado and that during those calls, he “pressured [her] to provide testimony that he believed might prove favorable to the State” and “threatened [her] with arrest if she did not communicate with him on a daily basis.”

According to the complaint, Ms. Rivera-Mercado contacted Mr. Picart-Rivas’s attorney, Lyle Mazin. Mr. Mazin sent Mr. Qadri an email noting that Ms. Rivera-Mercado had appeared at depositions, at the stand-your-ground hearing, had not avoided service, intended to appear as a witness at trial, and had complied with every request of the State Attorney’s Office. The email informed Mr. Qadri that his threats had taken an emotional toll on Ms. Rivera-Mercado.

Mr. Rivera’s trial was scheduled to begin on March 23, 2015, but was continued to April 20. Ms. Rivera-Mercado claimed that she learned of the continuance and as a result did not appear in court on March 23. She alleged that despite Mr. Qadri knowing about the continuance, he signed and filed a petition for issuance of arrest warrant for material

³ That ruling was affirmed on appeal. State v. Picartrivas, 186 So. 3d 1042 (Fla. 5th DCA 2016).

witness when she failed to appear.⁴ The complaint asserted that Mr. Qadri's reason for filing the petition was "personal spite and malice toward [her]."

The complaint further alleged that Mr. Qadri's material witness warrant contained a number of falsehoods, including that Ms. Rivera-Mercado refused to communicate with Mr. Qadri and that she had not contacted anyone in the State Attorney's Office. As a result, on April 29, 2015, Ms. Rivera-Mercado was arrested on the warrant, strip-searched, and placed into the Orange County Jail. She remained in custody until May 4, 2015, when a hearing was held before the judge assigned to Mr. Rivera's case. At that hearing, Mr. Qadri unsuccessfully opposed her release, arguing that she had failed to appear at both the scheduled March and April trials.⁵ At the conclusion of the hearing, the trial court ordered her release.

In 2019, Ms. Rivera-Mercado filed her complaint alleging false arrest and malicious prosecution. Both defendants filed motions to dismiss. Mr. Qadri asserted absolute, qualified, and sovereign immunity. Ms. Ayala likewise claimed absolute immunity. Ms. Ayala posited that absolute prosecutorial immunity extends to both individual prosecutors assigned to the State Attorney's Office, as well as the State Attorney's Office itself. Following a hearing, both motions were denied and these proceedings followed.

The issue before us is whether Mr. Qadri and Ms. Ayala are immune from the suit filed by Ms. Rivera-Mercado. "In reviewing a motion to dismiss, the trial court must confine its determination to the four corners of the complaint to determine whether the plaintiff has alleged a cause of action upon which relief may be granted." Swope v. Krischer, 783

⁴ The petition was accompanied by an affidavit from a detective.

⁵ The April trial was continued as well.

So. 2d 1164, 1167 (Fla. 4th DCA 2001) (citation omitted). Likewise, “the appellate court must confine its review to the four corners of the complaint and must accept as true all well-pleaded allegations.” Id. (citation omitted). Taking the allegations in the complaint as true, we find that Mr. Qadri and Ms. Ayala are nevertheless entitled to absolute immunity and reverse. Therefore, it becomes unnecessary to address the remaining immunity defenses.

It is well settled that the various officers of the State Attorney’s Office are quasi-judicial officers, as established by article V, section 17 of the Florida Constitution. Office of State Att’y, Fourth Judicial Circuit of Fla. v. Parrotino, 628 So. 2d 1097, 1099 (Fla. 1993). As quasi-judicial officers, “[p]rosecutors enjoy absolute immunity from lawsuits for damages resulting from the performance of their quasi-judicial functions of initiating or maintaining a prosecution.” Swope, 783 So. 2d at 1167 (citing State v. Rutherford, 707 So. 2d 1129, 1133 (Fla. 4th DCA 1997)); accord Berry v. State, 400 So. 2d 80, 84 (Fla. 4th DCA 1981). This is true regardless of whether the prosecutor acted “maliciously or corruptly.” See Berry, 400 So. 2d at 83.

The actions giving rise to Ms. Rivera-Mercado’s suit for malicious prosecution and false arrest stem from two events: Mr. Qadri’s securing of a material witness warrant and his unsuccessful argument at a hearing for the continued detention of Ms. Rivera-Mercado.

When deciding whether absolute immunity applies, courts utilize a functional approach, examining the nature of the function performed, rather than the motivation of the person performing the function. See Buckley v. Fitzsimmons, 509 U.S. 259, 269 (1993). If the function is intimately associated with the role of the prosecutor in acting as

an advocate for the State, absolute immunity attaches. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976); Swope, 783 So. 2d at 1167. The securing of a material witness warrant is one such prosecutorial function. Flagler v. Trainor, 663 F.3d 543, 548 (2d Cir. 2011).

As in the present case, the prosecutor in Flagler was alleged to have made false statements in the securing of a material witness warrant. Id. at 545. Before finding that the prosecutor was absolutely immune, the Flagler court acknowledged that “[p]rosecutors are generally immune from liability under 42 U.S.C. § 1983 for conduct in furtherance of prosecutorial functions that are intimately associated with initiating or presenting the State’s case.” Id. at 546 (citing Imbler, 424 U.S. at 427–28); see also Adams v. Hanson, 656 F.3d 397, 401 (6th Cir. 2011).

In Adams, the Sixth Circuit Court of Appeals addressed the question of whether a prosecutor was entitled to absolute immunity for her alleged false and misleading statements about the availability of a witness to a trial court in the course of criminal proceedings. 656 F.3d at 399–411. In concluding the prosecutor enjoyed absolute immunity, the Sixth Circuit stated:

Other circuits that have addressed the question have held that prosecutors are ordinarily entitled to absolute immunity for conduct falling within a prosecutorial function when they seek detention of a material witness pursuant to judicial order. See Betts v. Richard, 726 F.2d 79, 81 (2d Cir. 1984); Daniels v. Kieser, 586 F.2d 64, 68-69 (7th Cir. 1978), cert. denied, 441 U.S. 931, 99 S. Ct. 2050, 60 L. Ed. 2d 659 (1979); cf. Odd v. Malone, 538 F.3d 202, 212 (3d Cir. 2008) (plaintiff “acknowledge[d] that [prosecutor] was acting in her prosecutorial capacity when she secured the material witness warrant”) We have stated in dicta that absolute immunity protects a prosecutor seeking the incarceration of a material witness, [White by] Swafford v. Gerbitz, 860 F.2d 661, 665 n.4 (6th Cir. 1988)

. . . .

[B]ecause the issuance of either a material-witness warrant or an order of contempt “is unquestionably a judicial act,” a prosecutor’s statements to the court regarding the availability of a witness are “‘intimately associated with the judicial phase of the criminal process’ . . . [and are] connected with the initiation and conduct of a prosecution, particularly where,” as here, “the hearing occurs after arrest [of the defendant]” in the criminal proceedings. Burns v. Reed, 500 U.S. [478,] 492 [1991] (internal citation omitted).

Id. at 403-04 (first, second, and fourth alterations in original).

Ms. Rivera-Mercado relies upon Odd v. Malone, 538 F.3d 202 (3d Cir. 2008), and Kalina v. Fletcher, 522 U.S. 118 (1997), in support of her argument that Mr. Qadri is not entitled to absolute prosecutorial immunity. In Odd, a witness was held on a material witness warrant. 538 F.3d at 205. The judge set bond at \$300,000 and ordered the prosecutor to notify him of any delay in the case, which was being handled by another judge. Id. Despite the court’s directive, the prosecutor failed to notify the judge when the case was continued, resulting in the witness’s continued detention. Id. at 206.

Notably, the Third Circuit focused on the failure of the prosecutor to inform the court of the continuance as directed, rather than the act of securing the material witness warrant. Id. at 212–14. The court cited to Professor Chemerinsky’s Federal Jurisdiction treatise, suggesting that in-court activities are generally protected, while out-of-court activities, and activities traditionally performed by the police, are not. Id. at 210 (citing Erwin Chemerinsky, Federal Jurisdiction 525–26 (4th ed. 2003)). The Odd court reasoned that the obligation of the prosecutor to inform the judge of a continuance was an administrative duty and thus not protected by absolute immunity. Id. at 214. The trial judge in the instant case had given no such directive to Mr. Qadri. Accordingly, we find Odd distinguishable.

Likewise, we do not find that Kalina “controls the outcome” of the case as Ms. Rivera-Mercado asserts. The prosecution in Kalina was governed by Washington Criminal Rules, which required that an arrest warrant be supported by an affidavit or “sworn testimony establishing the grounds for issuing the warrant.” Kalina, 522 U.S. at 121. Although not required, the protocol in Washington was that this was accomplished by the submission of a “Certification for Determination of Probable Cause” in which the prosecutor “personally vouched for the truth of the facts set forth in the certification under penalty of perjury.” Id.⁶

The defendant in Kalina had been charged with the theft of computer equipment from a school. Id. The prosecutor’s certification contained two falsehoods. First, observing that the defendant’s fingerprints had been found on a glass partition in the school, the prosecutor represented that the defendant had never been associated with the school. Id. That was untrue; the defendant had actually installed the glass partitions. Id. The second falsehood was that the defendant had been identified from a photo lineup as the person who had asked for an appraisal of one of the stolen computers. Id.

In Kalina, the Court once again discussed the distinction between “activities [which] were intimately associated with the judicial phase of the criminal process, and thus were functions to which the reasons for absolute immunity apply with full force,” and “those aspects of the prosecutor’s responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate.” Id. at 125 (quoting Imbler, 424 U.S. at 430–31). Examples of the former include a prosecutor’s conduct before a grand jury,

⁶ Nothing prevented this from being accomplished through an affidavit submitted by law enforcement.

appearance in court in support of an application for a search warrant, and the presentation of evidence. Id. at 125–26. Examples of the latter are the giving of legal advice to law enforcement during the investigation phase of a criminal prosecution, the holding of a press conference, and fabrication of evidence concerning an unsolved crime. Id. at 126.

In determining absolute immunity, courts look to “the nature of the function performed, not the identity of the actor who performed it.” Forrester v. White, 484 U.S. 219, 229 (1988). The prosecutor is shielded from liability for damages for commencing and pursuing the prosecution, regardless of any allegations that his or her actions were undertaken with an improper state of mind or improper motive. See, e.g., Bernard v. Cty. of Suffolk, 356 F.3d 495, 502 (2d Cir. 2004) (“[A] defendant’s motivation in performing such advocative functions [as deciding to prosecute] is irrelevant to the applicability of absolute immunity.”). Once a court determines that the challenged conduct involves a function covered by absolute immunity, the actor is shielded from liability for damages regardless of the wrongfulness of his motive or the degree of injury caused. See Cleavinger v. Saxner, 474 U.S. 193, 199–200 (1985).

The Kalina Court found that the filings of an information and motion for an arrest warrant, despite the use of untruthful information, were protected by absolute immunity. Kalina, 522 U.S. at 129. However, in the preparation under oath in the Certification for Determination of Probable Cause, the prosecutor was acting as a complaining witness and not protected by absolute immunity.⁷ Id. at 129–31.

Ms. Rivera-Mercado’s logic would turn the filing of any motion alleged to have been filed by a prosecutor in bad faith into the basis for a malicious prosecution action. Mr.

⁷ Kalina still could assert qualified immunity as a defense.

Qadri's action in the filing of a motion for a material witness warrant and advocating for her continued detention were done in the course of an ongoing prosecution. Regardless of his motives, he continued to function as an advocate and his actions were not administrative in nature.

Prosecutorial immunity from suit rests on the same footing as the immunity conferred upon judges and grand juries. Imbler, 424 U.S. at 422–23. Its rationale rests upon public policy that a strict guarantee of immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi-judicial offices. Id. at 423–24. Both judges and prosecutors alike should be free from the threat of suit for their official actions, because permitting suit could deter a full and unfettered exercise of judicial or quasi-judicial authority. Parrotino, 628 So. 2d at 1098–99. As articulated in Adams:

Absolute immunity for prosecutorial duties is justified by the same considerations that supported prosecutorial immunity under the common law. These include “concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust,” [Imbler, 424 U.S.] at 423, 96 S.Ct. 984 Although absolute immunity “leave[s] the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty,” “the broader public interest” would be disserved if defendants could retaliate against prosecutors who were doing their duties. Id. at 427, 96 S.Ct. 984.

656 F.3d at 401–02 (second alteration in original).

Although the basis for the trial court's denial was not enunciated, it appears that the judge did not believe there was any necessity for the issuance of the material witness warrant. Accepting the facts as alleged, that would be true. However, that analysis

focuses on whether Mr. Qadri was operating in good faith, rather than on the nature of his actions. His motion to dismiss, as well as Ms. Ayala's, should have been granted.

PETITIONS FOR WRIT OF CERTIORARI GRANTED as to case nos. 5D20-427, 5D20-429; ORDER DENYING MOTIONS TO DISMISS REVERSED AND CAUSE REMANDED as to case no. 5D20-457.

ORFINGER and HARRIS, JJ., concur.